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Before the
Federal Communications Commission
Washington, D.C. 20554

CS Docket No. 96-83; FCC 96-151

**Preemption of Restrictions on
Over-the-Air Reception Devices**

To: Office of the Secretary
Federal Communications Commission
1919 M. Street, N.W.
Room 222
Washington, D.C. 20554

Dear Sir or Madam:

I am a partner in the Secaucus, New Jersey law firm of Scarinci & Hollenbeck. Our firm represents more than thirty public entities throughout New Jersey including more than 15 planning and zoning boards. I also serve as editor of the New Jersey Planning Officials Municipal Land Use Law Legislative Session Update, Director of the New Jersey State Bar Association's Local Government Law Section, a Trustee of the Institute of Municipal Attorneys and frequently write and/or lecture on land use law and development.

The Federal Communications Commission proposed rule concerning the location of satellite earth stations and home television reception devices has a direct impact on all local governmental entities and one which would appear to be a throwback to policies of the 1960s and 1970s which were never looked upon favorably.

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The proposed order in part appears to create a presumption that state or local regulations which attempt to control the installation, maintenance or use of satellite dishes less than three feet in diameter are unreasonable. To suggest that 567 New Jersey municipalities could seek an FCC waiver from these rules is not realistic or practical.

The New Jersey Municipal Land Use Law establishes the methodology for all municipalities in this State to control and to regulate development. The M.L.U.L. requires comprehensive and uniform standards which may be tailored to a given municipality's individualistic needs. Over the past ten years, many of the municipalities that I personally represent have adopted reasonable and workable standards controlling the placement of these dishes so as to protect citizens' rights while at the same time fostering aesthetics and neighborhood values.

In 1986, the FCC did not preempt all regulations via local land use ordinances of satellite dish antennas. Instead, the FCC preempted those land use ordinances which differentiated between satellite dishes and other types of antennae. 47 C.F.R. 25 (March 14, 1986). However, the FCC has now chosen to use the language from Section 207 of the Telecommunications Act of 1996 to preempt all local land use ordinances that regulate antennas or dishes less than three feet in diameter. I believe this to be inappropriate since it marks a return to the non-planning in the past which resulted in literally forests of antennas growing on roofs, especially in urban centers.

We submit that the enabling legislation does not provide the FCC with the authority to adopt such a blanket preemption. Instead, the statute gives the FCC the right to preempt local land use ordinances which "impair" someone from using this type of receiving equipment. The municipalities which I personally represent have continually followed this criteria. The current process does not take into account ordinances which do not "impair" the use of such equipment but provide for the use of such receivers in a manner consistent with the right of municipalities to regulate land and building use.

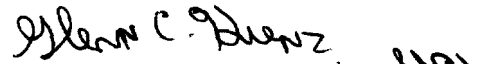
We respectfully request that the FCC reconsider this proposed rule that eliminates the input of local planning and zoning boards. The FCC has exceeded the scope of its authority under Section 207 of the Act. In conclusion, the proposed rule raises some serious

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constitutional issues and represents an intrusion into areas traditionally within the police powers of local government. Given the complexity of this topic, I suggest that the comment period be extended.

Very truly yours,

A handwritten signature in cursive script that reads "Glenn C. KiENZ". To the right of the signature, there is a small, stylized mark that appears to be "my sign".

GLENN C. KIENZ
For the Firm

cc: Randi Albert, Cable Services Bureau
International Transcription Services, Inc.

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